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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JOSUE HERNANDEZ, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

WM WHOLESALE, LLC d/b/a CAKE
BRAND, a Delaware limited liability
company,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE ACTION

1
2 1. This class action aims to hold Defendant WM Wholesale, LLC
3 responsible for masquerading products containing delta-9 tetrahydrocannabinol
4 (“THC”), a federally controlled Schedule 1 drug, as what appear to be their exact
5 opposites in the marketplace: purportedly lawful delta-8 vape products derived
6 from hemp. Consumers purchase Defendant’s products believing they are
7 perfectly legal and safe to use, and instead receive products criminally outlawed in
8 many states throughout the country (and federally) and could result in them get
9 fired for a failed drug test or serving prison time for driving under the influence,
10 possession, or use. Defendant’s conduct is worse than, *e.g.*, selling purportedly
11 non-alcoholic beer that is in fact alcoholic. Mere possession of the products
12 actually sold is a crime.

13 2. Delta-9 THC derived from marijuana is a federally controlled
14 Schedule 1 drug. On the other hand, delta-8 products derived from hemp are legal
15 to sell, purchase, and possess in most jurisdictions so long as the products contain
16 less than 0.3% delta-9 THC.

17 3. When manufacturers misrepresent delta-9 THC content in delta-8
18 vape products, consumers face serious risks to their health, safety, and livelihood.
19 Users who choose these products for their advertised low delta-9 THC content
20 may unexpectedly experience stronger psychoactive effects than intended, which
21 can lead to anxiety, panic attacks, impaired coordination, and dangerous situations
22 like driving while unknowingly intoxicated. This misrepresentation is particularly
23 harmful for individuals who need to maintain sobriety for employment or medical
24 reasons.

25 4. The deceptive labeling can also have devastating personal
26 consequences for consumers who rely on the accuracy of THC content for drug
27 testing compliance. Individuals may fail workplace or legal drug screenings due to
28 consuming higher levels of delta-9 THC than disclosed, potentially resulting in job

1 loss, revocation of professional licenses, loss of custody rights, or violations of
2 probation or parole requirements. This is particularly true in states where delta-9
3 THC from cannabis remains illegal both federally and at the state level. The
4 manufacturer's dishonesty thus threatens not just consumers' immediate physical
5 safety, but their economic security and personal freedom as well.

6 5. This case involves Defendant's widespread, deceptive representations
7 that its delta-8 vape products contain less than 0.3% delta-9 THC. On Defendant's
8 website, www.cakebrand.com, a footer states: "Products on this website contain
9 0.3% THC or less." The label of each product likewise contains representations
10 such as: (1) "CONTAINS: Hemp derived Δ 8THC and <.3% Δ 9THC"; and (2)
11 "This product is in compliance with section 10113 of the 2018 Farm Bill and
12 contains <.3% Δ 9THC."

13 6. However, these representations are false. Many of Defendant's delta-
14 8 products in fact contain significantly more than 0.3% delta-9 THC. Accordingly,
15 Defendant's products are considered "marijuana" products (*i.e.*, cannabis with
16 more than 0.3% delta-9 THC) under federal law, and not lawful products derived
17 from "hemp" (*i.e.*, cannabis with less than 0.3% delta-9 THC), and are therefore a
18 Schedule 1 controlled substance.

19 7. By deceiving consumers about the content of its products, Defendant
20 is able to take away market share from competing products and increase its own
21 sales and profits. Consumers lack the ability to test or independently ascertain the
22 true delta-9 THC content at the point of sale. Reasonable consumers must and do
23 rely on Defendant and its competitors to honestly report the nature of their
24 products and their ingredients. The representations that the products contain less
25 than 0.3% delta-9 THC communicate to reasonable consumers that the product is
26 specifically formulated to comply with federal law and minimize the risk of
27 unexpected psychoactive effects, anxiety, panic attacks, impaired coordination,
28

1 and failed drug tests. The fact that the products contain greater than 0.3% delta-9
2 THC directly contradicts this claim.

3 8. Plaintiff brings this action individually and on behalf of similarly
4 situated consumers who purchased Defendant's delta-8 products that were falsely
5 and misleadingly labeled as having less than 0.3% delta-9 THC. Plaintiff seeks to
6 represent a putative nationwide class, a Florida subclass, and multi-state classes
7 seeking damages, interest thereon, reasonable attorney fees and costs, restitution,
8 equitable relief, and disgorgement of all benefits Defendant has enjoyed from its
9 unlawful and deceptive business practices, as detailed herein. In addition, Plaintiff
10 seeks injunctive relief to stop Defendant's unlawful conduct in the labeling and
11 marketing of the products. Plaintiff makes these allegations based on their
12 personal knowledge as to themselves and their own acts and observations and,
13 otherwise, on information and belief based on investigation of counsel.

14 **PARTIES**

15 9. Defendant WM Wholesale LLC is a Delaware limited liability
16 company with its principal place of business at 1007 West Grove Street, Orange,
17 California. Defendant's current individual members are all domiciled in Santa
18 Ana, California, and the members direct, control, and coordinate the company's
19 activities from California. Defendant also has a member that is a California limited
20 liability company, Jaidee Capital LLC, with a principal place of business at 15
21 Macarthur Place, Unit 2406, Santa Ana, CA 92707. The individual members of
22 Jaidee Capital LLC are also domiciled in Santa Ana, California.

23 10. Defendant designs, manufactures, advertises, distributes, and sells a
24 variety of delta-8 vape pens and cartridges under its in-house brand, Cake, both
25 online at www.cakebrand.com and in retail stores across the United States. The
26 products at issue in this case include: Cake Brand delta-8 disposable devices and
27 cartridges, including "live resin" delta-8 disposable devices and cartridges and
28 "Classics" delta-8 disposable devices and cartridges, (collectively, the

1 “Products”). The Products are sold in 1.0 g, 2.0 g, 3.0 g, and 6.0 g disposable
2 devices and cartridges. Defendant is responsible for the labeling of the Products,
3 and their formulation.

4 11. Plaintiff Josue Hernandez is domiciled in Florida. Plaintiff Hernandez
5 purchased Cake Brand delta-8 disposable devices and cartridges in 2023 and 2024
6 from the website www.delta8resellers.com and from smoke shops in Miami
7 Beach, Florida. Plaintiff Hernandez purchased the Products for personal use to
8 help with stress relief and relaxing after work. Plaintiff Hernandez specifically
9 chose the Products because he wished to avoid the inebriation caused by delta-9
10 THC in traditional cannabis products. Plaintiff Hernandez resides in Florida where
11 marijuana remains illegal to purchase, possess, and use. For this reason, among
12 others, it was important to Plaintiff Hernandez that the Products he purchased
13 contained less than 0.3% delta-9 THC.

14 12. Plaintiff reviewed and relied on the Products’ packaging before
15 buying it, including the representation that the Products contained less than 0.3%
16 delta-9 THC.

17 13. If Plaintiff had known the Products were falsely labeled and in fact
18 contained a higher level of delta-9 THC than the legal limit, Plaintiff would not
19 have bought the Products.

20 14. Plaintiff will be unable to rely on the Products’ labeling and
21 advertising in the future, and so will be unable to purchase the Products in the
22 future, although they would like to. Plaintiff continues to purchase what he
23 believes are delta-8 products, although he does not currently purchase the
24 Products, and intends on continuing purchasing delta-8 products in the future.

25 **JURISDICTION AND VENUE**

26 15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
27 1332(d)(2)(A) because this case is a class action where the aggregate claims of all
28 members of the proposed class are in excess of \$5,000,000.00, exclusive of

1 interest and costs, and at least one member of the proposed class is a citizen of a
2 state different from Defendant.

3 16. This Court has personal jurisdiction over Defendant because its
4 principal place of business is in California, its current individual members are
5 domiciled in California, the residence of Defendant's sole LLC member is
6 California, and Defendant coordinates the company's activities from California.
7 Further, Defendant's contacts with the State of California are continuous and
8 substantial, and Defendant otherwise intentionally availed itself of the laws of this
9 State through the marketing of the Products at issue in California to consumers in
10 California and through sales of the Products in California to consumers in
11 California, so as to render the exercise of jurisdiction by this Court consistent with
12 traditional notions of fair play and substantial justice. A substantial portion of the
13 events giving rise to the claims alleged here, including the design, manufacture,
14 and labeling of the Products, occurred in California.

15 17. Venue is proper in this District under 28 U.S.C. § 1391 because a
16 substantial part of the events, omissions, and acts giving rise to the claims herein
17 occurred in this District and because Defendant engages in continuous and
18 systematic business activities within this District.

19 **FACTUAL ALLEGATIONS**

20 18. Delta-8 THC vape products experienced a dramatic surge in
21 popularity following the 2018 Farm Bill's legalization of hemp-derived products.
22 What began as a niche market rapidly expanded into a multi-billion-dollar
23 industry, with vape pens and cartridges appearing in convenience stores, smoke
24 shops, and online retailers across the nation.

25 19. This dramatic market growth was driven by several factors. The legal
26 gray area created by the Farm Bill allowed hemp-derived cannabinoids to be sold
27 in states where traditional cannabis remained illegal. Alongside widespread
28

1 availability, there was an increased consumer interest in alternatives to traditional
2 cannabis for managing stress and anxiety.

3 20. Delta-8 and delta-9 THC are similar but distinct chemical compounds
4 found in cannabis plants. The key difference is in their molecular structure – delta-
5 8 THC has a double bond on the 8th carbon chain, while delta-9 THC has this
6 bond on the 9th carbon chain. Delta-8 is often produced by chemically converting
7 CBD extracted from hemp, rather than being directly extracted from cannabis
8 plants like delta-9 THC.

9 21. All of these compounds can produce psychoactive effects by binding
10 to cannabinoid receptors in the brain, but delta-8 typically produces milder effects
11 compared to delta-9. Delta-9 THC is the primary psychoactive compound in what
12 is commonly called marijuana and is more potent, often producing stronger
13 euphoric effects and potentially more anxiety or paranoia in some users. Delta-8 is
14 generally reported to produce a clearer-headed, less intense sensation with lower
15 anxiety potential.

16 22. From a legal standpoint, delta-9 THC derived from marijuana is a
17 federally controlled Schedule 1 drug. On the other hand, delta-8 products derived
18 from hemp are legal to sell, purchase, and possess in many jurisdictions so long as
19 the products contain less than 0.3% delta-9 THC.

20 23. Consumers typically choose delta-8 products for several key reasons.
21 Many users seek these alternatives because they want milder psychoactive effects
22 than traditional delta-9 THC provides. Consumers report delta-8 products offer a
23 more subtle, clear-headed experience with less anxiety and paranoia, making them
24 more suitable for daytime use or for people sensitive to traditional cannabis
25 products.

26 24. Users specifically choose these products seeking potential therapeutic
27 benefits like anxiety relief or pain management, but with less intense psychoactive
28 effects than they might get from regular cannabis products. The perceived reduced

1 risk of adverse effects like anxiety attacks or overwhelming intoxication makes
2 these alternatives appealing to newer users or those who find traditional cannabis
3 too potent.

4 25. Legal accessibility is another major factor for consumers. In areas
5 where traditional cannabis remains illegal, consumers turn to delta-8 products
6 because they can often purchase them legally through retail stores and online
7 vendors due to their hemp-derived status.

8 26. Unfortunately, an exploding market often incentivizes manufacturers
9 to cut corners. When demand spikes, manufacturers face pressure to increase
10 production volume quickly while keeping prices competitive. This can lead them
11 to rush quality control processes, use cheaper and potentially unsafe ingredients or
12 solvents in extraction, or outsource production to less reputable facilities. In the
13 case of cannabinoid products, this might mean inadequate testing of THC levels,
14 poor purification of extraction solvents, or contamination from heavy metals or
15 pesticides.

16 27. The combination of high profit potential and minimal regulatory
17 oversight creates opportunities for bad actors to enter the market rapidly. These
18 manufacturers may intentionally mislabel products, skip crucial safety testing
19 steps, or operate out of uncontrolled environments without proper manufacturing
20 protocols. Rather than investing in proper equipment, training, and quality control,
21 they focus on maximizing short-term profits while the market is hot.

22 28. This case concerns the manufacture and marketing of delta-8 products
23 that contain greater than 0.3% delta-9 THC. As explained above, when
24 manufacturers misrepresent delta-9 THC content in delta-8 vape products,
25 consumers face serious risks to their health, safety, and livelihood. Users who
26 choose these products specifically for their advertised low delta-9 THC content
27 may unexpectedly experience stronger psychoactive effects than intended, which
28 can lead to anxiety, panic attacks, impaired coordination, and dangerous situations

1 like driving while unknowingly intoxicated. This misrepresentation is particularly
2 harmful for individuals who need to maintain sobriety for employment or medical
3 reasons.

4 29. The deceptive labeling can also have devastating personal
5 consequences for consumers who rely on the accuracy of THC content for drug
6 testing compliance. Individuals may fail workplace or legal drug screenings due to
7 consuming higher levels of delta-9 THC than disclosed, potentially resulting in job
8 loss, revocation of professional licenses, loss of custody rights, or violations of
9 probation or parole requirements. This is particularly true in states where delta-9
10 THC from cannabis remains illegal both federally and at the state level. The
11 manufacturer's dishonesty thus threatens not just consumers' immediate physical
12 safety, but their economic security and personal freedom as well.

13 30. Defendant designs, manufactures, advertises, distributes, and sells a
14 variety of delta-8 vape pens and cartridges under its in-house brand, Cake, both
15 online at www.cakebrand.com and in retail stores across the United States.

16 31. Defendant's website, www.cakebrand.com, includes a footer that
17 states: "Products on this website contain 0.3% THC or less." *See* Exhibit A.

18 32. The label of each of the Products likewise makes representations such
19 as: "CONTAINS: Hemp derived Δ 8THC and <.3% Δ 9THC" or "CONTAINS:
20 Hemp derived Δ 8THC, CBD, CBN and <.3% Δ 9THC." All of the Products'
21 labels also state: "This product is in compliance with section 10113 of the 2018
22 Farm Bill and contains <.3% Δ 9THC." *See* Exhibit B.

23 33. Indeed, federal and state laws require the Products to contain less
24 than 0.3% delta-9 THC before Defendant can lawfully manufacture and sell the
25 Products in states like Florida, among others. Even without the direct
26 representations on the Products' labels, consumers who are shopping for delta-8
27 products in states where marijuana is illegal reasonably assume that a product
28 being sold online that can be shipped to their state, or a product being sold in a

1 local smoke shop, complies with federal and state laws and must contain less than
2 0.3% delta-9 THC.

3 34. And yet, the Products in fact contain greater than 0.3% delta-9 THC
4 and, therefore, more than permitted by federal and state law and than represented
5 on the Products' labels.

6 35. Defendant's label representations are false and misleading. Contrary
7 to Defendant's material representations, the Products do not contain less than
8 0.3% delta-9 THC.

9 36. With respect to the Products, Defendant knew that one of the most
10 important, material label representations to consumers is the statement that the
11 Products contain less than 0.3% delta-9 THC. Defendant made this prominent
12 statement with knowledge that it is false and/or misleading to reasonable
13 consumers. By deceiving consumers and regulators about the content of its
14 Products, Defendant takes away market share from competing products, thereby
15 increasing its own sales and profits.

16 37. Consumers lack the ability to test or independently ascertain the
17 specific compounds in a vape product and their concentrations at the point of sale.
18 Reasonable consumers must and do rely on Defendant to honestly report the
19 nature of the Products and their contents, and to comply with all federal and state
20 laws when designing, manufacturing, distributing, and selling the Products.

21 38. Defendant intended for consumers to rely on its representations, and
22 hundreds of thousands of consumers did in fact so rely. As a result of its false and
23 misleading labeling and marketing, Defendant was able to sell the Products to
24 hundreds of thousands of consumers throughout the United States and to profit
25 handsomely from these transactions. In fact, by Defendant's own admission, as of
26 February 2021 it was generating more than \$1 million per week in sales of the
27 Products.
28

1 39. Defendant's deceptive packaging and marketing at issue here was
2 consistent during the last four years.

3 40. Notably, the "less than 0.3% delta-9 THC" and "in compliance with
4 section 10113 of the 2018 Farm Bill" representations are not disclaimed or
5 modified anywhere on the Products' labels. No asterisk or marking appears by the
6 representations that would suggest to a reasonable consumer that they need to look
7 elsewhere on the label to understand the true meaning. Because the statements
8 appear effectively as one of the main claims on the label of the Products,
9 reasonable consumers interpret them at face value: that the Products literally
10 contain less than 0.3% delta-9 THC and are legal to purchase, possess, and use
11 under federal law.

12 41. Defendant deceptively and misleadingly conceals other material facts
13 about the Products, including: (a) the true nature of the Products' ingredients; (b)
14 that the Products contain greater than 0.3% delta-9 THC; (c) that the Products are
15 not legal to purchase, possess, or use under federal law, and many state laws; and
16 (d) that the Products are a Schedule 1 drug due to the delta-9 THC content.

17 42. To this day Defendant continues to conceal and suppress the
18 existence, identity, nature, and concentration of delta-9 THC in the Products.

19 43. Similarly, to this day, Defendant continues to conceal and suppress
20 the fact that the Products are not legal to possess, purchase, or use under federal
21 law and many state laws.

22 44. Plaintiff contends that on occasion he would experience a heightened
23 sense of inebriation and intoxication while using the Products.

24 45. Plaintiff contends that had he known the Products contained an illegal
25 amount of delta-9 THC greater than 0.3%, he would not have purchased the
26 Products.

1 46. Based on Defendant's representations and marketing materials,
2 Plaintiff and reasonable consumers would not expect that the Products would
3 contain an illegal amount of delta-9 THC greater than 0.3%.

4 47. Plaintiff purchased the Products to his detriment, as did members of
5 the putative classes.

6 48. Plaintiff purchased the Products for personal use, including to
7 lawfully manage stress.

8 49. The price paid by Plaintiff was representative of the price paid by
9 similarly situated consumers who purchased the Products.

10 50. The representations on the Products purchased by Plaintiff were the
11 same as the representations purchased by members of the putative classes.

12 51. Acting reasonably under the circumstances, Plaintiff relied on
13 Defendant's representations for the truth of the matter stated.

14 52. Defendant intentionally represented that the Products contained less
15 than 0.3% delta-9 THC on the Products' label in order to be permitted to sell the
16 Products to consumers in the first place, and to induce purchases and increase
17 sales of the Products.

18 53. Manufacturers are able to charge a price premium for legally
19 compliant products that are labeled as compliant with federal law. Defendant
20 intentionally included the representations at issue on the Products' label and in
21 marketing materials to increase sales and/or charge a premium for the Product.

22 54. Defendant knew or should have known that reasonable consumers
23 would consider the representations material in deciding to purchase the Products.

24 55. Defendant knew or should have known that the representations could
25 plausibly deceive reasonable consumers into believing that the Products contained
26 less than 0.3% delta-9 THC and were lawful to purchase, possess, and use.

27 56. Reasonable consumers ascribe a common meaning to words on
28 product labels.

1 57. Reasonable consumers rely on product labels for their truth and
2 accuracy.

3 58. Reasonable consumers are not required to conduct independent
4 research to determine the truth of label statements.

5 59. Reasonable consumers are not expected to look beyond misleading
6 representations on the label of a product or in marketing materials to determine
7 whether they are false.

8 60. Instead, it is the responsibility of product manufacturers to accurately
9 label their products in a manner that is not misleading.

10 61. Plaintiff and reasonable consumers reasonably believed that the
11 statements on the Products' label were true regarding their content and legality.

12 62. As described herein, Defendant's representations are literally false.

13 63. Accordingly, there is no "common sense" interpretation of the
14 representations that would overcome their falsity.

15 64. At the time Plaintiff and reasonable consumers purchased the
16 Products, Plaintiff and consumers did not know, and had no reason to know, that
17 the representations were misleading, deceptive, and unlawful. Plaintiff and
18 consumers would not have purchased the Products if they had known the truth.

19 65. As an immediate, direct, and proximate result of Defendant's false,
20 misleading, and deceptive representations and omissions, Defendant injured
21 Plaintiff and putative class members in that they: (a) paid a sum of money for a
22 product that was not as represented; (b) paid a premium price for a product that
23 was not as represented; (c) were deprived the benefit of the bargain because the
24 Products they purchased were different from what Defendant warranted; (d) were
25 deprived the benefit of the bargain because the Products had less value than what
26 was represented; (e) did not receive a product that measured up to their
27 expectations as created by Defendant; (f) used a product that Plaintiff and the
28 members of the classes did not expect or consent to; (g) used a product that was

1 unlawful to purchase, possess, and use; (h) without their knowing consent, used a
2 substance that is potentially harmful to their health or which could jeopardize their
3 economic security and personal freedom; (i) without their knowing consent, used a
4 substance containing an unlawful level of delta-9 THC.

5 66. Accordingly, Plaintiff and class members have suffered injury in fact
6 and lost money or property because of Defendant's wrongful conduct.

7 67. As the intended, direct, and proximate result of Defendant's false,
8 misleading, and deceptive representations and omissions, Defendant has been
9 unjustly enriched through more sales of falsely labeled product and higher profits
10 at the expense of Plaintiff and class members. As a direct and proximate result of
11 its deception, Defendant also unfairly obtained other benefits, including the higher
12 value associated with a legally compliant brand, redirecting sales to it and away
13 from its competitors, and increased sales of its Product.

14 **CLASS ALLEGATIONS**

15 68. ***Class Definition:*** Plaintiff brings this action on behalf all people in
16 the following classes and subclasses (collectively referred to as "Class Members"):

17 (a). **Nationwide Class:** all people in the United States who
18 purchased the Products for personal or household use during
19 the last four years.

20 (b). **Florida Subclass:** all people in Florida who purchased the
21 Products for personal or household use during the last four
22 years.

23 (c). **Multi-State Warranty Class:** all people who purchased the
24 Products for personal or household use (1) in Alaska,
25 Arkansas, California, Delaware, District of Columbia,
26 Hawaii, Indiana, Kansas, Michigan, Minnesota, Montana,
27 Nevada, New Hampshire, New Jersey, North Dakota,
28 Oklahoma, Oregon, Pennsylvania, Rhode Island, South

1 Carolina, South Dakota, Texas, Utah, Virginia, or Wyoming
2 within the applicable statute of limitations; or (2) in
3 Colorado or Massachusetts within the applicable statute of
4 limitations.

5 (d). Multi-State Consumer Protection Class: all people who
6 purchased the Products for personal or household use (1) in
7 the states of Michigan, Minnesota, or New Jersey within the
8 applicable statute of limitations; (2) in the state of Missouri
9 within the applicable statute of limitations; (3) in the states
10 of California, Florida, Massachusetts, or Washington within
11 the applicable statute of limitations; or (4) in the states of
12 Illinois and New York within the applicable statute of
13 limitations.

14 69. Subject to additional information obtained through further
15 investigation and discovery, the foregoing class definitions may be expanded or
16 narrowed by amendment or in the motion for class certification, including through
17 the use of multi-state subclasses to account for material differences in state law, if
18 any.

19 70. Specifically excluded from the putative classes are Defendant and any
20 entities in which Defendant has a controlling interest, Defendant's agents and
21 employees, the judge to whom this action is assigned, members of the judge's
22 staff, and the judge's immediate family.

23 71. **Numerosity**. Class Members are so numerous that their individual
24 joinder herein is impracticable. On information and belief, each Class or Subclass
25 includes hundreds of thousands of consumers. The precise number of Class
26 Members and their identities are unknown to the Plaintiff at this time but may be
27 determined through discovery. Class Members may be notified of the pendency of
28

1 this action by mail and/or publication through the distribution records of
2 Defendant, its agents, or other means.

3 72. ***Commonality and Predominance.*** Common questions of law and fact
4 exist as to all Class Members and predominate over questions affecting only
5 individual Class Members. Common legal and factual questions include, but are
6 not limited to:

- 7 (a) Whether Defendant misrepresented and/or failed to disclose
8 material facts concerning the Products;
- 9 (b) Whether the omissions and representations on the Products' label
10 and the Products' marketing materials, or any single omission or
11 representation, is false, misleading, and/or deceptive;
- 12 (c) Whether Defendant's conduct in advertising and selling the
13 Products amounted to unlawful, unfair, and/or deceptive business
14 practices;
- 15 (d) Whether Defendant breached an express and/or implied warranty
16 created through the labeling and marketing of its Products;
- 17 (e) Whether Plaintiff and the Class Members are entitled to equitable
18 and/or injunctive relief;
- 19 (f) Whether Plaintiff and the Class Members have sustained damage
20 as a result of Defendant's unlawful conduct;
- 21 (g) The proper measure of damages sustained by Plaintiff and the
22 Class Members; and
- 23 (h) Whether Defendant was unjustly enriched by its unlawful
24 practices.

25 73. ***Typicality.*** The claims of the Plaintiff are typical of the claims of the
26 Class Members in that Plaintiff and the Class Members sustained damages as a
27 result of Defendant's uniform wrongful conduct, as alleged above.
28

1 74. **Adequacy.** Plaintiff will fairly and adequately protect the interests of
2 Class Members. Plaintiff has retained counsel that is highly experienced in
3 complex consumer class action litigation, and Plaintiff intends to vigorously
4 prosecute this action on behalf of the classes. Plaintiff has no interests that are
5 antagonistic to those of the Class Members. Plaintiff has no past or present
6 financial, employment, familial, or other relationship with any of the attorneys in
7 this case that would create a conflict of interest with the proposed Class Members.

8 75. **Superiority.** A class action is superior to all other available methods
9 for the fair and efficient adjudication of this controversy for, *inter alia*, the
10 following reasons: prosecutions of individual actions are economically impractical
11 for Class Members; the Class Members are readily definable; prosecution as a
12 class action avoids repetitious litigation and duplicative litigation costs, conserves
13 judicial resources, and ensures uniformity of decisions; and prosecution as a class
14 action permits claims to be handled in an orderly and expeditious manner.

15 76. Defendant has acted or failed to act on grounds generally applicable
16 to the Class Members, thereby making appropriate final injunctive relief with
17 respect to the Class Members as a whole.

18 77. Without a class action, Defendant will continue a course of action
19 that will result in further damages to the Plaintiff and Class Members and will
20 likely retain the benefits of its wrongdoing.

21 78. **Presuit notice.** On August 19, 2024 and November 7, 2024, Plaintiff
22 provided Defendant pre-suit notice in a letter that complied with all applicable
23 notice requirements.

24 **COUNT I**
25 **Violations of California's Unfair Competition Law ("UCL")**
26 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

27 79. Plaintiff incorporates and realleges each preceding paragraph as
28 though fully set forth herein.

1 80. Plaintiff brings this cause of action individually and on behalf of all
2 the classes and subclasses.

3 81. California Business & Professions Code Section 17200 prohibits acts
4 of “unfair competition,” including any “unlawful, unfair or fraudulent business act
5 or practice” and “unfair, deceptive, untrue or misleading advertising.”

6 82. Defendant acted with knowledge and intent.

7 83. Plaintiff alleges a claim under all three prongs of the UCL.

8 84. As alleged above, Defendant engaged in fraudulent conduct that had
9 the tendency or capacity to deceive or confuse reasonable consumers.

10 85. Defendant’s conduct also constitutes “unfair” business acts and
11 practices within the meaning of the UCL, in that its conduct was injurious to
12 consumers, offended public policy, and was unethical and unscrupulous.
13 Defendant’s violation of consumer protection and unfair competition laws resulted
14 in harm to consumers.

15 86. Plaintiff also alleges a violation under the “unlawful” prong of the
16 UCL because Defendant’s conduct violated consumer protection laws and the
17 common law as set forth herein. Further, Plaintiff alleges a violation of the
18 unlawful prong because it is unlawful to sell products containing more than 0.3%
19 delta-9 at the federal level, as well as Florida, and many other states.

20 87. As a direct and proximate result of Defendant’s unfair and deceptive
21 practices, Plaintiff and the other members of the classes have suffered and will
22 continue to suffer out-of-pocket losses.

23 88. Plaintiff and class members in the classes have suffered an injury in
24 fact resulting in the loss of money and/or property as a proximate result of the
25 violations of law and wrongful conduct of Defendant alleged herein, and they lack
26 an adequate remedy at law to address the unfair conduct at issue here. Legal
27 remedies available to Plaintiff and class members in the classes are inadequate
28 because they are not equally prompt, certain, or efficient as equitable relief.

1 Damages are not equally certain as restitution because the standard that governs
2 restitution is different than the standard that governs damages. Hence, the Court
3 may award restitution even if it determines that Plaintiff fails to sufficiently
4 adduce evidence to support an award of damages. Damages and restitution are not
5 the same amount. Unlike damages, restitution is not limited to the amount of
6 money a defendant wrongfully acquired plus the legal rate of interest. Equitable
7 relief, including restitution, entitles a plaintiff to recover all profits from the
8 wrongdoing, even where the original funds taken have grown far greater than the
9 legal rate of interest would recognize. Legal claims for damages are not equally
10 certain as restitution because claims under the UCL entail few elements. In short,
11 significant differences in proof and certainty establish that any potential legal
12 claim cannot serve as an adequate remedy at law.

13 89. Equitable relief is appropriate because Plaintiff may lack an adequate
14 remedy at law if, for instance, damages resulting from their purchase of the
15 Products are determined to be an amount less than the premium price of the
16 Products. Without compensation for the full premium price of the Products,
17 Plaintiff and members of the classes would be left without the parity in purchasing
18 power to which they are entitled.

19 90. Plaintiff seeks all relief available under the UCL.

20 **COUNT II**
21 **Violation of California's False Advertising Law**
22 **Cal. Bus. & Prof. Code. §§ 17500, et seq.**

23 91. Plaintiff incorporates and realleges each preceding paragraph as
24 though fully set forth herein.

25 92. Plaintiff brings this cause of action individually and on behalf of all
26 the classes and subclasses.
27
28

93. Defendant violated California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500 by engaging in the conduct alleged above.

94. 84. The FAL makes it “unlawful for any person to make or disseminate or cause to be made or disseminated before the public . . . in any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement, concerning . . . personal property or services professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

95. Defendant knew or should have known that its conduct was false and/or misleading.

96. Plaintiff lacks an adequate remedy at law for the reasons already alleged above in connection with the UCL claim.

97. Plaintiff and Class Members have suffered harm as a result of Defendant's violations of the FAL.

98. Plaintiff seeks all available relief under the FAL.

COUNT III
Violations of California’s Consumer Legal Remedies Act (“CLRA”)
Cal. Civ. Code §§ 1750, *et seq.*

99. Plaintiff incorporates and realleges each preceding paragraph as though fully set forth herein.

100. Plaintiff brings this cause of action individually and on behalf of all the classes and subclasses.

101. Defendant is a “person” as defined by California Civil Code § 1761(c).

102. Plaintiff and the other members in the classes are “consumers” within the meaning of California Civil Code § 1761(d).

103. For the reasons alleged above, Defendant violated California Civil Code § 1770(a)(5)(7) and (9).

104. Plaintiff provided pre-suit notice of the claims asserted under the CLRA via certified mail, return receipt requested, in compliance with all of the CLRA's requirements.

105. Defendant's unfair and deceptive acts or practices occurred repeatedly in Defendant's trade or business.

106. Defendant acted with knowledge and intent.

107. As alleged above, Defendant engaged in conduct that had the tendency or capacity to deceive or confuse reasonable consumers.

108. With respect to the CLRA claim, Plaintiff alleges in the alternative that they lack an adequate remedy at law for the reasons already alleged above in connection with the UCL claim.

109. As a result of Defendant's misconduct, Plaintiff and members of the classes have suffered monetary harm.

110. Plaintiff seeks all relief available under this cause of action.

COUNT IV
Breach of Implied Warranty

111. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully herein.

112. Plaintiff brings this cause of action individually and on behalf of the Nationwide Class, the Multi-State Warranty Class, and the Florida Subclasses against Defendant.

113. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the Products, impliedly warranted that the Products were specially formulated to contain less than 0.3% delta-9 THC and comply with federal law, when that is not true.

1 114. Defendant breached its warranty implied in the contract for the sale of
2 the Products because they could not pass without objection in the trade under the
3 contract description: the Products were not adequately contained, packaged, and
4 labeled as per Defendant's contract with Plaintiff and members of the Nationwide
5 Class, the Multi-State Warranty Class, and the Florida Subclasses, and the
6 Products do not conform to the implied affirmations of fact made on the marketing
7 and packaging for the Products. U.C.C. §§ 2-313(2)(a), (e), (f). As a result,
8 Plaintiff and members of the Nationwide Class, the Multi-State Warranty Class,
9 and the Florida Subclasses did not receive the goods as impliedly warranted by
10 Defendant to be merchantable.

11 115. Plaintiff and members of the Nationwide Class, the Multi-State
12 Warranty Class, and the Florida Subclasses purchased the Products in reliance
13 upon Defendant's skill and judgment and the implied warranties of fitness for the
14 purpose.

15 116. The Products were defective and unlawful to purchase, possess, and
16 use when they left the exclusive control of Defendant.

17 117. Plaintiff and members of the Nationwide Class, the Multi-State
18 Warranty Class, and the Florida Subclasses did not receive the goods as warranted.

19 118. As a direct and proximate cause of Defendant's breach of the implied
20 warranty, Plaintiff and members of the Nationwide Class, the Multi-State
21 Warranty Class, and the Florida Subclasses have been injured and harmed
22 because: (a) they would not have purchased the Products if they knew the Products
23 contained greater than 0.3% delta-9 THC and were unlawful to purchase, possess,
24 and use under federal and their respective state laws; and (b) the Products do not
25 have the characteristics, uses, or benefits as promised by Defendant.

26 119. Plaintiff provided reasonable pre-suit notice of this claim.

27 120. Plaintiff seeks all available relief under this cause of action.
28

COUNT V
Breach of Express Warranty

121. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully herein.

122. Plaintiff brings this cause of action individually and on behalf of the Nationwide Class, the Multi-State Warranty Class, and the Florida Subclasses against Defendant.

123. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the products at issue, expressly warranted that the Products were specially formulated to contain less than 0.3% delta-9 THC and comply with federal law, when that is not true. The warranty was part of the description of the goods and the bargain upon which the goods were offered for sale.

124. By falsely representing that the Products contained less than 0.3% delta-9 THC and comply with federal law, Defendant breached its express warranty.

125. Plaintiff and members of the Nationwide Class, the Multi-State Warranty Class, and the Florida Subclasses did not receive the goods as warranted.

126. As a direct and proximate cause of Defendant's breach of the express warranty, Plaintiff and members of the Nationwide Class, the Multi-State Warranty Class, and the Florida Subclasses have been injured and harmed because: (a) they would not have purchased the Products if they knew the Products contained greater than 0.3% delta-9 THC and were unlawful to purchase, possess, and use under federal and their respective state laws; and (b) the Products do not have the characteristics, uses, or benefits as promised by Defendant.

127. Plaintiff provided reasonable pre-suit notice of this claim.

128. Plaintiff seeks all available relief under this cause of action.

COUNT VI
Unjust Enrichment

129. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully herein.

130. Plaintiff brings this cause of action individually and on behalf of all other Class Members against Defendant.

131. To the extent required, Plaintiff asserts this cause of action in the alternative to legal claims, as permitted by Rule 8.

132. Plaintiff and the Class Members conferred a benefit on Defendant in the form of the gross revenues Defendant derived from the money they paid to Defendant.

133. Defendant knew of the benefit conferred on it by Plaintiff and the Class Members.

134. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff's and the Class Members' purchases of the Products, which retention of such revenues under these circumstances is unjust and inequitable because Defendant omitted that the Products contain greater than 0.3% delta-9 THC and are illegal to purchase, possess, and use. This caused injuries to Plaintiff and Class Members because they would not have purchased the Products if the true facts concerning the Products had been known.

135. Defendant accepted and retained the benefit in the amount of the gross revenues derived from sales of the Products to Plaintiff and Class Members.

136. Defendant has thereby profited by retaining the benefit under circumstances which would make it unjust for Defendant to retain the benefit.

137. Plaintiff and Class Members are, therefore, entitled to restitution in the form of the revenues derived from Defendant's sale of the Products.

138. As a direct and proximate result of Defendant's actions, Plaintiff and the Class Members have suffered in an amount to be proven at trial.

139. Putative Class Members have suffered an injury in fact and have lost money as a result of Defendant's unjust conduct.

140. Putative Class Members lack an adequate remedy at law with respect to this claim and are entitled to non-restitutionary disgorgement of the financial profits that Defendant obtained as a result of its unjust conduct.

COUNT IX
Fraud by Omission / Intentional Misrepresentation

141. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully herein.

142. Plaintiff brings this cause of action individually and on behalf of all other Class Members against Defendant.

143. This claim is based on fraudulent omissions and intentional misrepresentations concerning the molecular makeup of the Products and the fact that they contain greater than 0.3% delta-9 THC and are illegal to purchase, possess, and use. As discussed above, Defendant failed to disclose: (a) the true nature of the Products' ingredients; (b) that the Products contain greater than 0.3% delta-9 THC; (c) that the Products are not legal to purchase, possess, or use under federal law, and many state laws; and (d) that the Products are a Schedule 1 drug due to the delta-9 THC content. Further, Defendant intentionally misrepresented: (a) the true nature of the Products' ingredients; (b) that the Products contain greater than 0.3% delta-9 THC; (c) that the Products are legal to purchase, possess, or use under federal law, and many state laws; and (d) that the Products are not a Schedule 1 drug due to the delta-9 THC content.

144. The false and misleading omissions and misrepresentations were made with knowledge of their falsehood. Defendant knew the true nature of the Products and their legal status. Nonetheless, Defendant continued to sell the

1 Products using the false and misleading omissions and misrepresentations alleged
2 herein to unsuspecting consumers.

3 145. The false and misleading omissions and misrepresentations were
4 made by Defendant, upon which Plaintiff and Class Members reasonably and
5 justifiably relied, and were intended to induce and actually induced Plaintiff and
6 Class Members to purchase the Products.

7 146. The fraudulent actions of Defendant caused injury to Plaintiff and
8 Class Members, who are entitled to damages and punitive damages.

9 147. Plaintiff seeks all relief available under this cause of action.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
12 situated, seeks judgment against Defendant, as follows:

- 13 a. For an order certifying the classes, naming Plaintiff as the representative
14 of aforementioned classes, and naming Plaintiff's counsel as Class
15 Counsel for the certified classes;
- 16 b. For an order declaring Defendant's conduct violates the statutes
17 referenced herein;
- 18 c. For an order finding in favor of Plaintiff and the classes on all counts
19 asserted herein;
- 20 d. For actual, compensatory, statutory, and/or punitive damages in amounts
21 to be determined by the Court and/or jury;
- 22 e. For prejudgment interest on all amounts awarded;
- 23 f. For an order of restitution and all other forms of equitable monetary
24 relief;
- 25 g. For injunctive relief as pleaded or as the Court may deem proper; and
- 26 h. For an order awarding Plaintiff and the classes their reasonable attorney
27 fees, expenses, and costs of suit.
- 28

JURY TRIAL DEMANDED

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff requests a jury trial on all issues so triable.

Dated: November 21, 2024 Respectfully submitted,

/s/ Joel D. Smith

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Attorneys for Plaintiff

CLRA Venue Declaration, Civil Code § 1780(c)

I, Joel D. Smith, declare as follows:

1. I have personal knowledge of the facts stated herein and, if called upon to do so, could competently testify hereto.

2. I am the attorney for Plaintiff in the above-captioned action.

3. I submit this declaration in support of the Class Action Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*

4. The Class Action Complaint has been filed in the proper place for trial of this action.

5. It is my understanding that Defendant regularly transacts business in Orange County, and the acts and omissions giving rise to this action occurred in large part in Orange County.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on November 21, 2024 in Killingly, CT.

By: /s/ Joel D. Smith

Joel D. Smith